

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DERRICK HARGRESS,  
Petitioner,  
v.  
UNITED STATES OF AMERICA,  
Respondent.

) CASE NO. C05-1338-JCC  
CR88-116-JCC  
)  
)  
ORDER DISMISSING ONE CLAIM  
AND TRANSFERRING  
PETITIONER'S SUCCESSIVE §2255  
MOTION TO THE NINTH CIRCUIT  
COURT OF APPEALS  
)

The Court, having reviewed petitioner's petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241, respondent's answer, the Report and Recommendation of the Honorable Mary Alice Theiler, United States Magistrate Judge, Petitioner Hargress's objections<sup>1</sup> thereto, and the balance of the record, does hereby find and ORDER:

- (1) The Court adopts the Report and Recommendation.
  - (2) Petitioner's claim regarding good time credits is DISMISSED for failure to exhaust

<sup>1</sup>Petitioner's objections conceded that the Report & Recommendation ("R&R") was correct to recommend dismissal of his claim regarding good time credits. Furthermore, he requested leave to proceed in the Ninth Circuit, in line with the R&R's recommendation that his first claim be transferred to the Ninth Circuit. Finally, his objections also appear to contain objections to Magistrate Judge Theiler's order denying his motion to appoint counsel. These objections are not timely.

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administrative remedies.

(3) The remainder of petitioner's petition for a writ of habeas corpus (Doc. #5) is construed as a successive motion to vacate, set aside, or correct a sentence pursuant to 28 U.S.C. § 2255. This court therefore lacks jurisdiction to consider such a motion until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28 U.S.C. § 2244(b)(3)(A); Circuit Rule 22-3(a). Accordingly, this case is hereby TRANSFERRED to the Ninth Circuit Court of Appeals, pursuant to 28 U.S.C. § 1631 and Circuit Rule 22-3(a).

Petitioner is advised that this transfer alone does not constitute compliance with § 2244(b)(3) and Circuit Rule 22-3; he must still file a motion for leave to proceed in the Court of Appeals and make the showing required by § 2244(b). Petitioner is referred to this statute and Circuit Rule 22-3 for further information. Should petitioner be granted leave by the Ninth Circuit Court of Appeals to proceed on his successive petition, his filing date for the purposes of the one-year statute of limitations set forth in § 2244(d) shall be the date of the initial filing in this court.

(4) The Clerk is directed to close this case and transfer all original documents to the Ninth Circuit Court of Appeals. The Clerk shall, however, retain a copy of the motion and of this Order in the file. The Clerk is further directed to send a copy of this Order to petitioner, to counsel for respondent, and to Judge Theiler.

DATED this 8<sup>th</sup> day of March, 2006.

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John C. Coughenour  
UNITED STATES DISTRICT JUDGE

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